

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

NARGIS NIAZ,

Plaintiff,

v.

MICHAEL CHERTOFF, et al.,

Defendants

No. C-07-4030 MMC

**ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT;
DENYING PLAINTIFF'S CROSS-MOTION
FOR SUMMARY JUDGMENT**

Before the Court is defendants Michael Chertoff ("Chertoff") and Condoleezza Rice's ("Rice") motion for summary judgment, pursuant to Rule 56 of the Federal Rules of Civil Procedure, filed October 9, 2007. Also before the Court is plaintiff Nargis Niaz's cross-motion for summary judgment, pursuant to Rule 56, filed October 26, 2007. Having considered the papers filed in support of and in opposition to the motions, the Court rules as follows.¹

In her complaint, plaintiff seeks issuance of an order directing Chertoff, as Secretary of the Department of Homeland Security and head of the U.S. Citizenship and Immigration Services ("USCIS"), and Rice, as Secretary of State and head of the National Visa Center ("NVC"), to "expeditiously process" plaintiff's "immigrant visa petition." (See Compl. at 4:2-3); see also 5 U.S.C. § 706(1) (providing district court may "compel agency action unlawfully withheld or unreasonably delayed").

¹By order filed November 9, 2007, the Court approved the parties' stipulation to vacate the previously-noticed November 16, 2007 hearing.

Here, defendants offer evidence, undisputed by plaintiff, that the USCIS received the petition from plaintiff on December 8, 2006, approved the petition on February 6, 2007, and forwarded the approved petition to the NVC on September 13, 2007. (See Proctor Decl., filed October 9, 2007, unnumbered exhibit). Because there is no showing that any step remains to be taken by the USCIS with respect to processing plaintiff's petition, plaintiff's claim that the USCIS has unreasonably delayed processing the petition is now moot. Accordingly, defendants have shown that Chertoff is entitled to summary judgment on such ground, and that plaintiff is not entitled to summary judgment as against Chertoff.²

Defendants also offer evidence, undisputed by plaintiff, that the NVC received from the USCIS the approved petition on September 19, 2007, and that the NVC "expect[s]" to "take approximately six months" to process plaintiff's petition. (See Grubb Decl., filed October 9, 2007, ¶¶ 3-4.) The instant complaint was filed on August 6, 2007, before the NVC had received the petition. Under such circumstances, plaintiff's claim that the NVC has unreasonably delayed processing the petition is premature. Moreover, plaintiff does not assert that a period of the length anticipated by the NVC would constitute an unreasonable delay. Accordingly, defendants have shown that Rice is entitled to summary judgment, and that plaintiff is not entitled to summary judgment as against Rice.

CONCLUSION

For the reasons stated above, defendants' motion for summary judgment is hereby GRANTED, and plaintiff's cross-motion for summary judgment is hereby DENIED.

IT IS SO ORDERED.

Dated: November 29, 2007


 MAXINE M. CHESNEY
 United States District Judge

²Plaintiff correctly notes that defendants offer no explanation as to why the USCIS waited over seven months to forward the processed petition to the NVC, particularly given that the USCIS advised plaintiff on February 7, 2007 that it had "sent" the processed petition to the NVC. (See Compl. Ex. 1.) Nevertheless, because USCIS has now acted, thereby rendering moot plaintiff's claim for an order to compel further action by Chertoff, no such explanation is necessary for purposes of the instant motion.